

SENATE BILL NO. 295

INTRODUCED BY T. RICHMOND, N. DURAM, D. LOGE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONVERSION OF ANNUAL LEAVE, SICK LEAVE, AND COMPENSATORY LEAVE TO DEATH BENEFITS IF A PUBLIC EMPLOYEE DIES IN AN ACCIDENT WHILE ON THE JOB; PROVIDING AN EXCEPTION IF THE EMPLOYEE DOES NOT NAME A BENEFICIARY OR AN ESTATE; AMENDING SECTIONS 2-18-412, 2-18-601, 2-18-617, 2-18-618, AND 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-412, MCA, is amended to read:

"2-18-412. Designation of person to receive decedent's warrants or death benefits -- reissuance.

(1) A person employed by the state may file with the person's appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had the employee survived or death benefits as provided in this chapter. The employee may change the designation from time to time. A person designated shall claim the warrants from the state treasurer and on sufficient proof of identity, the treasurer shall reissue the warrant in the name of the designated person and deliver the warrant to the designated person.

(2) The designation in subsection (1) may be used as a beneficiary under 2-18-617 or 2-18-618."

SECTION 2. SECTION 2-18-601, MCA, IS AMENDED TO READ:

"2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) (a) "Accident" means an unexpected traumatic incident or unusual strain that is identifiable by time and place of occurrence and caused by a specific event on a single day or during a single work shift.

(b) The term does not include an employee's suicide.

~~(+)(2)~~ (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

1 ~~(2)~~(3) "Break in service" means a period of time in excess of 5 working days when the person is not
2 employed and that severs continuous employment.

3 ~~(3)~~(4) "Common association" means an association of employees established pursuant to 2-18-1310
4 for the purposes of employer and employee participation in the plan.

5 ~~(4)~~(5) "Continuous employment" means working within the same jurisdiction without a break in service
6 of more than 5 working days or without a continuous absence without pay of more than 15 working days.

7 ~~(5)~~(6) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the
8 department of administration to participate in the plan.

9 ~~(6)~~(7) "Employee" means any person employed by an agency except elected state, county, and city
10 officials, schoolteachers, members of the instructional or scientific staff of a community college, persons
11 contracted as independent contractors or hired under personal services contracts, and student interns.

12 ~~(7)~~(8) "Full-time employee" means an employee who normally works 40 hours a week.

13 ~~(8)~~(9) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216
14 or 20-1-305, except Sundays.

15 ~~(9)~~(10) "Member" means an employee who belongs to a voluntary employees' beneficiary association
16 established under 2-18-1310.

17 ~~(10)~~(11) "Part-time employee" means an employee who normally works less than 40 hours a week.

18 ~~(11)~~(12) "Permanent employee" means a permanent employee as defined in 2-18-101.

19 ~~(12)~~(13) "Plan" means the employee welfare benefit plan established under Internal Revenue Code
20 section 501(c)(9) pursuant to 2-18-1304.

21 ~~(13)~~(14) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

22 ~~(14)~~(15) "Short-term worker" means:

23 (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

24 (b) for the legislative branch, an individual who:

25 (i) may be hired by a legislative agency without using a competitive process for an hourly wage
26 established by the agency;

27 (ii) may not work for the agency for more than 6 months in a continuous 12-month period;

28 (iii) is not eligible for permanent status;

29 (iv) may not be hired into a permanent position by the agency without a competitive selection process;

30 (v) is not eligible to earn the leave and holiday benefits provided in this part; and

- 1 (vi) may be discharged without cause.
- 2 ~~(15)~~(16) "Sick leave" means a leave of absence with pay for:
- 3 (a) a sickness suffered by an employee or a member of the employee's immediate family; or
- 4 (b) the time that an employee is unable to perform job duties because of:
- 5 (i) a physical or mental illness, injury, or disability;
- 6 (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care
- 7 for the employee or the employee's child;
- 8 (iii) parental leave for a permanent employee as provided in 2-18-606;
- 9 (iv) quarantine resulting from exposure to a contagious disease;
- 10 (v) examination or treatment by a licensed health care provider;
- 11 (vi) short-term attendance, in an agency's discretion, to care for a relative or household member not
- 12 covered by subsection ~~(15)(a)~~ (16)(a) until other care can reasonably be obtained;
- 13 (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family
- 14 and Medical Leave Act of 1993; or
- 15 (viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another
- 16 person.
- 17 ~~(16)~~(17) "Student intern" means a student intern as defined in 2-18-101.
- 18 ~~(17)~~(18) "Temporary employee" means a temporary employee as defined in 2-18-101.
- 19 ~~(18)~~(19) "Transfer" means a change of employment from one agency to another agency in the same
- 20 jurisdiction without a break in service.
- 21 ~~(19)~~(20) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or
- 22 personal business at the request of the employee and with the concurrence of the employer."

- 23
- 24 **Section 3.** Section 2-18-617, MCA, is amended to read:
- 25 **"2-18-617. Accumulation of leave -- cash for unused -- transfer -- death benefit.** (1) (a) Except as
- 26 provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the
- 27 maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess
- 28 vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the
- 29 excess was accrued.
- 30 (b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an

1 employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written
 2 request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a)
 3 and the employing agency denies the request, the excess vacation leave is not forfeited and the employing
 4 agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year
 5 in which the leave would have been forfeited under subsection (1)(a).

6 (2) (a) An employee who terminates employment for a reason not reflecting discredit on the employee
 7 and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

8 (i) cash compensation for unused vacation leave if the employee is not subject to subsection (2)(a)(ii);
 9 or

10 (ii) conversion of the employee's unused vacation leave balance to an employer contribution to an
 11 employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

12 (A) the employee is a member who belongs to a voluntary employees' beneficiary association
 13 established under 2-18-1310; and

14 (B) the contracting employer has entered into an agreement with members of the common association
 15 for an employer contribution based on unused vacation leave provided for in 2-18-611.

16 (b) Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is
 17 not eligible for cash compensation upon termination.

18 (c) If an employee has earned vacation leave but dies from an accident while on the job, the accumulated
 19 vacation leave not converted as provided in subsection (2)(a)(ii) AVAILABLE FOR CASH COMPENSATION UNDER
 20 SUBSECTION (2)(A)(i) must be paid out as a death benefit to the employee's beneficiary or estate. These benefits
 21 are in addition to workers' compensation benefits, if those are applicable.

22 (3) If an employee transfers between agencies of the same jurisdiction, cash compensation may not be
 23 paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation
 24 credits transferred with the employee.

25 (4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided
 26 for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits
 27 advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

28 (5) This section does not prohibit a school district from providing cash compensation for unused vacation
 29 leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence
 30 of a collective bargaining agreement, through a policy."

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2 **Section 4.** Section 2-18-618, MCA, is amended to read:

3 **"2-18-618. Sick leave -- death benefit payout.** (1) A permanent full-time employee earns sick leave
4 credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours)
5 equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned
6 at the rate of 12 working days for each year of service without restriction as to the number of working days that
7 may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
8 employed 90 days.

9 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

10 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
11 qualifying period.

12 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work
13 the qualifying period.

14 (5) A short-term worker may not earn sick leave credits.

15 (6) (a) Except as otherwise provided in 2-18-1311 or subsection (6)(c) of this section, an employee who
16 terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay
17 attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on
18 the basis of the employee's salary or wage at the time the employee terminates employment with the state,
19 county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection
20 begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However,
21 an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. ~~However, when~~

22 (b) When an employee transfers between agencies within the same jurisdiction, the employee is not
23 entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability
24 for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

25 (c) For an employee who dies from an accident while on the job, any sick leave benefits that are not
26 converted as provided in 2-18-1311 or subsection (10) of this section must be paid out as a death benefit at 100%
27 of the accumulated value of the sick leave to the employee's beneficiary or estate.

28 (7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to
29 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who
30 is again employed by any agency may not be credited with sick leave for which the employee has previously been

1 compensated or for which the employee has received an employer contribution to the health care expense trust
2 account.

3 (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in
4 this section.

5 (9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave
6 or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to
7 draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave,
8 irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established
9 pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group
10 benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement
11 this subsection.

12 (10) A local government may establish and administer through local rule a sick leave fund into which its
13 employees may contribute a portion of their accumulated sick leave or vacation leave."

14

15 **Section 5.** Section 2-18-621, MCA, is amended to read:

16 **"2-18-621. Unlawful termination -- unlawful payments.** (1) It is unlawful for an employer to terminate
17 or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and
18 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27,
19 chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining
20 agreement to the contrary.

21 (2) (a) An employee who terminates employment is entitled to receive only:

22 (i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in
23 2-18-618, and compensatory time earned as provided in the rules or policies of the employer or, in the case of
24 an employee's death, as described in ~~section 5~~ [SECTION 6]; and

25 (ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as
26 provided for in 2-18-622.

27 (b) An employee who terminates employment may not receive severance pay, a bonus, or any other type
28 of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

29 (3) Subsection (2) does not apply to:

30 (a) retirement benefits;

1 (b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal
2 dispute, claim, grievance, contested case, or lawsuit; or

3 (c) any other payment authorized by law."
4

5 NEW SECTION. Section 6. Compensatory time death benefit. ~~(1) Subject to subsection (2),~~
6 ~~compensatory COMPENSATORY~~ time accumulated by an employee of a state agency as defined in 2-2-102 who
7 dies in an accident while on the job and before being able to use the compensatory time must be converted at
8 100% of its value to a death benefit to be paid to the employee's beneficiary or estate.

9 ~~(2) A distribution of compensatory time is not allowed if an employee of a state agency dies in an~~
10 ~~accident while on the job without naming a beneficiary or an estate.~~
11

12 NEW SECTION. Section 7. Codification instruction. ~~[Section 5]~~ [SECTION 6] is intended to be codified
13 as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to ~~[section 5]~~ [SECTION
14 6].
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16 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.
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18 NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE
19 MEANING OF 1-2-109, TO JULY 1, 2017.
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21 NEW SECTION. SECTION 10. TERMINATION. [THIS ACT] TERMINATES JULY 4 JUNE 30, 2023.
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